

EXHIBIT 2

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION -- CLEVELAND**

KENNETH DEAN, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

BERKELEY SPRINGS INSTRUMENTS,
LLC.,

Defendant.

Case No. 1:19-cv-01969-SO

**DISTRICT JUDGE SOLOMON OLIVER,
JR.**

**MAGISTRATE JUDGE JONATHAN D.
GREENBERG**

**DECLARATION OF MOLLY E.
NEPHEW**

1. I am an adult over the 18 years of age and if called upon as a witness, I could testify to the matters set forth herein. I am an Associate Attorney at the law firm of Johnson Becker, PLLC. I represent Kenneth Dean (“Dean” or “Plaintiff”). My motion to be admitted *pro hac vice* was filed on August 27, 2019 and is currently pending before this Court. Once admitted I will be counsel of record and trial counsel in the above-entitled matter. As such, I am familiar with the facts of this litigation. Based on my personal knowledge and my review of the relevant records in this matter, which have been maintained in the course of my law firm’s regular business practices, I submit this declaration in support of *Plaintiff’s Motion for Conditional Certification and Notification to All Putative Class Members Under the Fair Labor Standards Act, 29 U.S.C. § 216(b); Memorandum of Points and Authorities in Support.*

2. Attached hereto as Exhibit A is a true and correct copy of *Proposed Notice to all Potential Class Members.*

3. Attached hereto as Exhibit B is a true and correct copy of *Proposed Consent to Sue Forms*.

Pursuant to 28 U.S.C. § 1746, I declare under the penalty of perjury the statements above are true and correct.

Executed on: October 14, 2019

s/ Molly E. Nephew

Molly E. Nephew

EXHIBIT A

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COURT AUTHORIZED NOTICE

NOTICE OF YOUR RIGHT TO JOIN LAWSUIT SEEKING UNPAID WAGES

TO: All current and former Project Managers, or other job titles performing the same or similar job duties, who worked for Berkeley Spring Instruments, LLC, at any time in the last three years.

Note: This notice is not an expression of any opinion by the Court about the merits of any claims asserted by the Plaintiff or defenses asserted by the Defendant as this is ongoing litigation in which those issues have not yet been decided.

1. INTRODUCTION

This Notice is to inform you of the existence of a collective-action lawsuit against Berkeley Springs Instruments, LLC (“Defendant”) in which you may be able to make a claim for damages under the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §§ 201, *et seq.*, to advise you of how your rights may be affected by this lawsuit, and to instruct you on the procedure for participating in this lawsuit, if you so choose.

2. DESCRIPTION OF THE LAWSUIT

On August 27, 2019, Plaintiff filed a lawsuit in the U.S. District Court for the Northern District of Ohio against Defendant.

Plaintiff seeks to represent all current and former Project Managers, or other job titles performing similar job duties, employed by Defendant who worked in excess of 40 hours in

any given workweek and were not paid overtime premiums. Plaintiff filed this lawsuit individually and on behalf of all other similarly situated Project Managers claiming that Defendant violated their rights under the FLSA by 1) failing to pay salaried Project Managers overtime premiums of at least one-half times their regular rates of pay for work performed over 40 hours in a workweek; and/or 2) failing to pay hourly Project Managers overtime premiums of at least one and one-half times their regular rates of pay for work performed over 40 hours in a workweek.

The lawsuit seeks back pay and liquidated damages equal to the amount of unpaid or underpaid overtime wages owed under the FLSA. The lawsuit also asks that Defendant be required to pay Plaintiff's costs and attorneys' fees.

Defendant denies Plaintiff's allegations.

3. ELIGIBILITY TO PARTICIPATE IN THE LAWSUIT

Plaintiff brings this collective action on behalf of:

All current and former Project Managers, or other job titles performing the same or similar job duties, who worked for Berkeley Spring Instruments, LLC, at any time in the last three years.

If you meet this description and you believe that Defendant failed to properly compensate you for time worked, you may have the right to make an FLSA claim against Defendant in this lawsuit to recover unpaid wages, liquidated damages, costs, and attorneys' fees.

It is entirely your own decision whether to join this lawsuit.

4. EFFECT OF JOINING THIS LAWSUIT

If you choose to join in this case and complete the steps in section 7 then you will become a plaintiff in this lawsuit and you will be bound by any judgment, whether it is favorable or unfavorable. This means that, if you win, you may be eligible to share in the monetary award. If you lose, no money will be awarded, you will not be able to file another lawsuit regarding the matter raised in this lawsuit.

If you sign and return the enclosed Consent to Sue form and are joined in the case, you are agreeing to designate Plaintiff as your agent to make decisions on your behalf concerning the litigation, the method and manner of conducting this litigation, the entering of an agreement with Plaintiff's attorneys concerning attorneys' fees and costs, and all other matters pertaining to this lawsuit. These decisions made and entered into by the Plaintiff and any other representatives will be binding on you if you join this lawsuit.

While this lawsuit is proceeding, you may be required to respond under oath to written questions, have your deposition taken, produce documents, and/or testify in court at a trial or hearing in the United States Federal Courthouse in Cleveland, Ohio.

5. NO LEGAL EFFECT IF YOU CHOSE NOT TO JOIN THIS LAWSUIT

If you do not wish to be part of this lawsuit, you do not need to do anything. If you do not join the lawsuit, you will not be part of the case in any way and you will not be bound by or affected by the result (whether favorable or unfavorable). In other words, if you do not file a Consent to Sue form, you will not receive any unpaid overtime wages or other relief granted under this lawsuit if Plaintiffs prevail on their FLSA claims.

Your decision to not join this case will not affect your right to bring a similar case on your own. If you intend to bring your own action, you should be aware that the statute of limitations is running on your claims, which means you may be losing claims each week that you wait to bring them.

6. YOUR LEGAL REPRESENTATION IF YOU JOIN THIS LAWSUIT

The attorneys for Plaintiffs and the proposed opt-in class is the law firm of Johnson Becker, PLLC. The address and telephone number is:

Molly E. Nephew
Johnson Becker, PLLC
444 Cedar Street, Suite 1800
St. Paul, Minnesota 55101
Telephone: (855) 779-3572
www.johnsonbecker.com

If you choose to join the lawsuit, you agree that Plaintiff's attorneys will be representing you. At this time, you will not be required to pay any attorneys' fees or court costs to the Plaintiff's attorneys. Rather, in the event the Plaintiff prevails in the lawsuit, either by judgment or settlement, the Plaintiff's attorneys will be requesting the Court Order Defendant to pay the Plaintiff's lawyers their reasonable attorneys' fees and reimburse them for any expenses. The Court must approve any fees received by the Plaintiff's attorneys.

7. HOW TO JOIN THIS LAWSUIT

If you wish to join this lawsuit, you must complete, sign, and mail the enclosed Consent to Sue form and return it in one of the following three ways **NO LATER THAN [DATE]**

- 1) Mailing the form in the enclosed pre-paid, addressed envelope to:

Yer Thao
JOHNSON BECKER, PLLC
444 Cedar Street, Suite 1800
St. Paul, MN 55101

- 2) Faxing it to Johnson Becker at 612-436-1950, ATTN Yer Thao; or

3) Signing it electronically and emailing your completed Consent to Sue form to: ythao@johnsonbecker.com.

Your signed Consent to Sue form must be filed with the Court by [DATE], for you to be eligible to participate in this lawsuit.

You must return the Consent to Sue form by the deadline above to preserve any legal right you may have to participate in this lawsuit. Until the Consent to Sue is filed with the court, the statute of limitations ordinarily continues to run on your individual claim for unpaid wages.

If you complete and timely return a Consent to Sue form, your continued right to participate in this lawsuit may depend upon a later decision by the court that you and Plaintiff are similarly situated. If the court finds you and the Plaintiff are not similarly situated, you may refile your own FLSA lawsuit within the time provided by law.

8. NO RETALIATION PERMITTED

Federal law prohibits Defendant from terminating your employment, discharging you, or in any other manner discriminating against you because you joined this lawsuit or in any other way exercised your rights under the FLSA.

9. FURTHER INFORMATION

For further information about this lawsuit, you may contact Plaintiff's attorneys by mail at the addresses indicated above in paragraph 7, by telephone at (800) 279-6386, extension 855 or by e-mail at ythao@johnsonbecker.com.

**DO NOT ATTEMPT TO CONTACT THE COURT, THE COURT'S
CLERK, OR THE JUDGE. THEY ARE NOT PERMITTED TO
ADDRESS YOUR INQUIRIES OR QUESTIONS**

EXHIBIT B

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Plaintiff,

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LLC.,

Defendant.

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CONSENT TO SUE

By signing below, I certify that:

1. I have read the notice of my right to join this lawsuit and consent to opt-in, join, and become a Plaintiff in this lawsuit.
2. I understand that this lawsuit asserts claims under the Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.*, and concerns the Defendant's alleged failure to properly pay overtime wages to all current and former Project Managers, or other job titles performing similar job duties, at any time in the last three years.
3. I represent that Defendant employed me as a Project Manager, or other job title performing similar job duties, within the last three years.
4. I represent that within the last three years, I worked in excess of 40 hour in one workweek, at least one time.
5. I agree to be bound by the Court, and to any judgment or settlement of this Action, whether favorable or unfavorable.
6. I hereby designate Johnson Becker, PLLC law firms to represent me in this lawsuit.

Signature: _____

Print Name: _____

Date: _____ Telephone Number: _____

Address: _____

Address (Line 2): _____

Email Address: _____

**TO OPT-IN TO AND JOIN THIS COLLECTIVE - ACTION LAWSUIT, FILL OUT THIS
FORM AND MAIL, FAX, OR EMAIL IT NO LATER THAN [DATE] TO:**

Johnson Becker, PLLC
Attn: Yer Thao
444 Cedar Street, Suite 1800, St. Paul, MN 55101
Email: ythao@johnsonbecker.com
Fax: (612) 436-1950